IN THE

Supreme Court of the United States

October Term, A.D., 1953.

No. 209.

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, *Petitioner,*

vs.

ARCHIE C. STUDE, WILLIAM LUMPKIN and POTTAWATTAMIE COUNTY, IOWA, *Respondents.*

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vs.

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vs.

ARCHIE C. STUDE and WILLIAM LUMPKIN, *Respondents.*

BRIEF OF PETITIONER.

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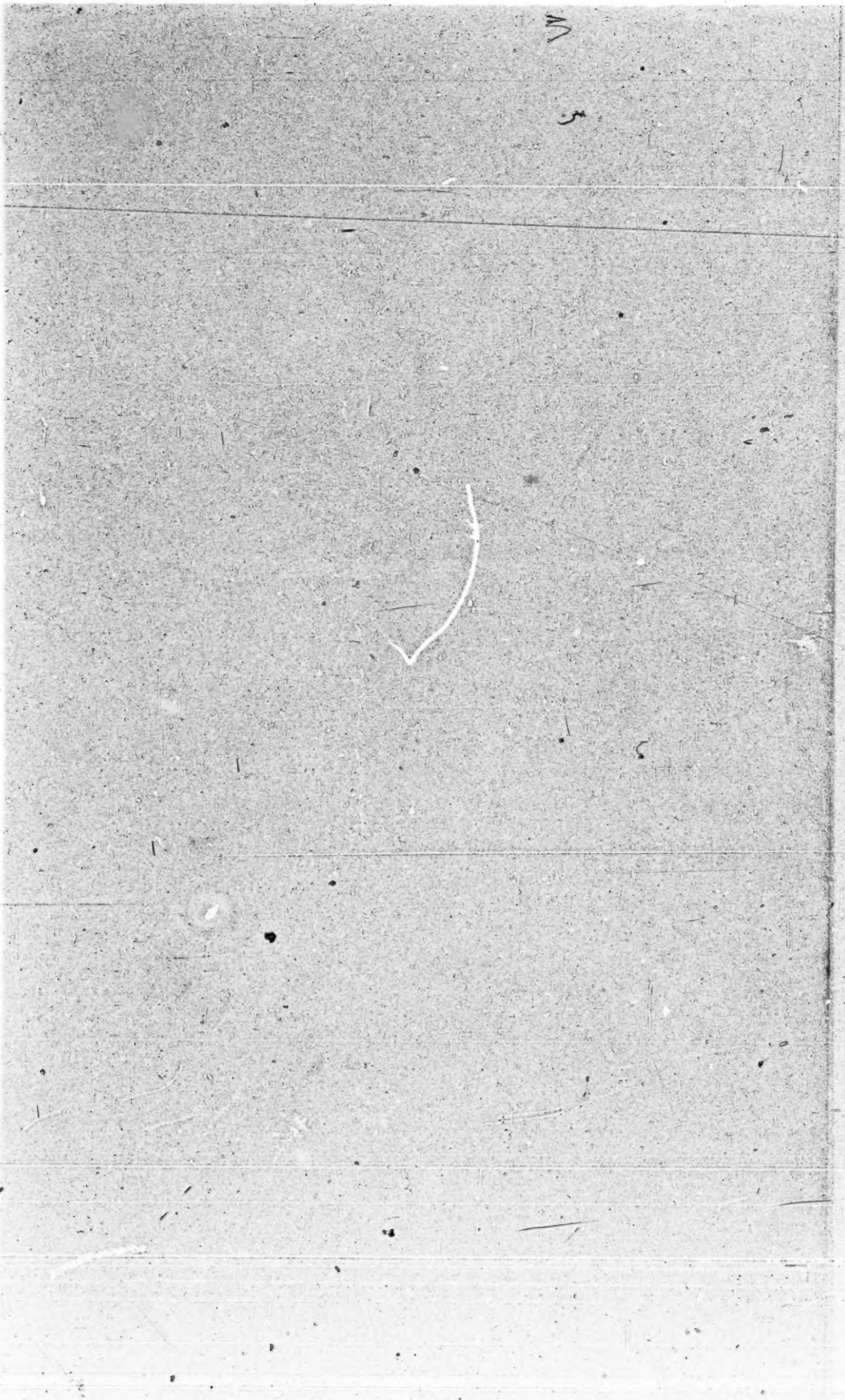

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BRIEF OF PETITIONER.

THE OPINIONS BELOW.

The opinion of the Court of Appeals for the Eighth Circuit upon original submission in that Court is reported at 204 F.2d 116 and is reprinted at R. 77. Upon petition for rehearing the supplemental opinion of the majority Circuit Judge Collett and the dissenting opinion of Chief Judge Gardner are reported at 204 F.2d 954, and are reprinted at R. 101.

In the District Court for Southern Iowa the case is reported as *C. R. I. & P. R. Co. vs. Kay*, 107 F. Supp. 895, and is reprinted at R. 19-37.

JURISDICTION.

I.

The jurisdiction of this court to review the judgment and the decision of the Court of Appeals for the Eighth Circuit is expressly provided for by the Federal Judiciary Act, Tit. 28, Sec. 1254, U.S.C.A.

II.

The date of the final judgment to be reviewed is June 17, 1953, on which date the majority opinion of the Court of Appeals for the Eighth Circuit was filed, denying petitioner's petition for rehearing. This court granted certiorari October 12, 1953.

STATEMENT OF THE CASE.

This case presents questions as to the jurisdiction of the District Courts of the United States over civil actions arising under state statutes of eminent domain in diversity of citizenship cases. Petitioner, a railroad corporation organized under Delaware law and a citizen of that state, was authorized by certificate of the Interstate Commerce Commission to construct approximately thirty-four miles of new railroad line in Cass and Pottawattamie Counties, Iowa, and to abandon certain existing trackage. Residents of several communities, a number of landowners, including several of the respondents here, and others opposed the project before the Interstate Commerce Commission, and also unsuccessfully brought suit in the United States District Court for Southern Iowa before a three-judge court to set aside the certificate, and enjoin construction of the new railroad line.

Petitioner acquired all necessary right of way for the new line, except for ten parcels involved in this litigation,

with respect to which it was authorized by an Iowa regulatory commission to acquire title by condemnation. The statutes of Iowa grant to railroad corporations the power to condemn lands for railroad purposes, provided the state commission, by certificate, finds such condemnation necessary. The pertinent Iowa statutes are printed in the appendix and are here very briefly summarized.

(a) The proceeding is initiated by the filing of a written application with the sheriff of the county in which the land to be condemned is located, describing the lands affected and to be condemned. (Sec. 472.13, Iowa Code 1950)

(b) The sheriff thereupon appoints a commission of six resident, disinterested freeholders of the county to assess the damages to all real estate in the county desired by the applicant.

(c) After notice to all owners, tenants and lienholders, this commission "views, if necessary, the land sought to be condemned", assesses the damages which the owner will sustain, and files a written report thereof with the sheriff. (Sec. 472.14, Iowa Code 1950)

(d) The appraisement of damages returned by the commission is final unless appealed from. (Sec. 472.17, Iowa Code 1950)

(e) Any party interested may within thirty days after the assessment is made "appeal therefrom to the district court." (Sec. 472.18) The "appeal" is docketed in the name of the owner of the land, or of the party otherwise interested and appealing, as plaintiff, and in the name of the applicant for condemnation, as defendant, and is tried "as in an action by ordinary proceedings". (Sec. 472.21, Iowa Code 1950)

In passing, it may be noted that this Court, the Supreme Court of Iowa and the United States Court of Appeals for the Eighth Circuit had all previously held that the pro-

ceeding before the Iowa sheriff is purely administrative, "in the nature of an inquest", and not judicial in character; that the proceeding has none of the attributes of a judicial proceeding or a civil action until it reaches the courts by way of appeal from the administrative award, and at that time becomes a civil action.

Mason City & Fort Dodge R.R. Co. vs. Boynton, 204 U.S. 570, 51 L.Ed. 629.

Myers vs. C&NW R.R. Co., 118 Iowa 312, 91 N.W. 1076.

Des Moines Water Co. vs. City of Des Moines, 206 Fed. 657.

On January 18, 1952, petitioner filed with the Pottawattamie County, Iowa, Sheriff its verified written application for appointment of commissioners and assessment of damages with respect to the ten parcels of real estate here involved. After notice to the landowners, tenants and other interested parties, awards were made on various dates commencing on February 8, 1952 and ending February 12, 1952, aggregating more than $330,000, each award being very substantially in excess of $3,000. Petitioner deposited the amounts of some of the awards with the Sheriff and took possession of the land immediately after the awards were made. Deposits were later made as to each tract and petitioner took possession of the lands condemned prior to submission of the cause in the district court. The new line of railroad has been constructed.

On March 7, 1952, petitioner, as plaintiff, filed in the office of the Clerk of the United States District Court for Southern Iowa ten separate complaints, each of which was separately docketed, in which the owners of the real estate condemned, their tenants and lienholders were designated as parties defendant. Each complaint described the lands condemned and those affected, set forth the prior proceedings before the Iowa Sheriff, the amount of the award, and

that the award was grossly excessive, unreasonable and far in excess of any actual damage sustained by defendants. Each complaint alleged diversity of citizenship and jurisdictional amount. (R. 1-4)

Appended to each complaint as an exhibit was a form of notice of appeal served prior to the filing of the complaint upon the Sheriff of Pottawattamie County, Iowa, and the landowners and their tenants, which recited that the railroad company "has appealed and does hereby appeal from the award of damages made by Sheriff's Commissioners on or about February 12, 1952", (describing the lands taken and the amount of the award) The notice further recited that the "appeal is taken to the United States District Court for Southern Iowa, Western Division and 'will be docketed in the office of the Clerk of said court at Council Bluffs, Iowa, on or before the 7th day of March, 1952.'" (R. 4)

The prayer of each complaint was that the damages be fixed and determined upon trial of the action. In the case of Archie C. Stude the complaint alleged that the damages awarded were $23,888.60 to the landowner and $1,000 to his tenant, for the taking of 24.47 acres of agricultural land, while the actual damage did not exceed $10,000.

Summons was duly issued by the Clerk of the District Court in each case, in the usual form citing all named defendants in each case to answer the complaint within twenty days after service. The summons, accompanied by a copy of the complaint, was served on each defendant by the United States Marshal. (R. 9)

On March 10 and 11, 1952, petitioner served upon the Sheriff and the landowners and tenants of each parcel of real estate a notice of appeal to the District Court of Pottawattamie County, Iowa, in form complying with the Iowa law. Petitioner paid the filing fees and caused the notices of appeal to be docketed in the office of the Clerk of the Pottawattamie County, Iowa, District Court on March 11,

1952. The landowner and his tenant were there designated as plaintiffs and the railroad as defendant. On March 12, 1952, petitioner filed in the office of the Clerk of the U. S. District Court for Southern Iowa its verified petition for removal to that court of the ten actions pending in the Pottawattamie County, Iowa, District Court, alleged diversity of citizenship and that the amounts in controversy in each case exceeded $3,000. All requisite procedural notices and bonds were filed as prescribed by Tit. 28, Secs. 1442-1445, U.S.C.A.

Thus, as to each of the parcels petitioner first filed its original complaint, as plaintiff, in the United States District Court, caused a summons to be issued by the Clerk of that court and served by the Marshal. Thereafter, petitioner served notices of appeal from the awards made by sheriff's commissioners to the state court, docketed the ten cases in the state court and then took all necessary steps to remove such cases to the United States District Court for Southern Iowa.

On March 24, 1952, the landowners (respondents here) filed in each of the actions instituted by petitioner as plaintiff motions to dismiss (R. 10-11, inc.) which challenged the jurisdiction of the United States District Court because plaintiff (petitioner here) had elected to proceed under Chap. 472, Iowa Code 1950, and could not, having followed the Iowa procedure before the sheriff, invoke the jurisdiction of the District Court. Subject to the ruling on such motions to dismiss the landowners filed answers and counterclaims for damages (R. 12-17, inc.) which raised no question except as to the amounts of damages to which the landowners were entitled. On the same date in the ten cases removed from the state court to the United States District Court the landowners filed complaints, or petitions, in which they designated themselves as plaintiffs, as required by Iowa law, and also filed motions to remand each

of the cases to the state court because the railroad company "is not the defendant in said action within the meaning of Tit. 28, Sec. 1441, U.S.C.A., so as to be entitled to remove said action" (R. 49).

The motions to dismiss in the cases in which the railroad was plaintiff, and to remand to the state court in the cases in which the railroad was defendant were submitted at one time to the District Court on May 26, 1952, but the cases were not otherwise consolidated. On July 19, 1952, District Judge Riley filed a memorandum opinion and order which is set forth at R. 18-37, inc. After correctly outlining the prior proceedings (except for the statement that appeals to the state court were first taken in point of time), Judge Riley stated that the eminent domain proceeding prescribed by Iowa statutes was purely administrative, and not a "civil action"; that the proceeding did not become judicial in character until the case reached the courts by way of appeal. Numerous authorities from both state and Federal jurisdictions were cited in support of this conclusion. Judge Riley went on to say, "an action for condemnation of real estate is a civil action within the meaning of Tit. 28, Sec. 1332, U.S.C.A.", and might therefore have been commenced, in the first instance, in the United States District Court. Judge Riley held that petitioner, having followed state procedural statutes in initiating the proceeding before the Pottawattamie County Sheriff could not "go partly down the road of state procedure and then cut across from the sheriff's commissioners' award to this court" (R. 35); and that "it would be an unwarranted encroachment on the state's authority for this court to find and declare that the prescribed proceedings, despite their expressed and explicit detail, contemplate and permit an appeal from the commissioners' award directly to this court, instead of to the court named by the General Assembly of Iowa" (R. 28-29, inc.).

In the ten removal cases Judge Riley pointed out that the only controversy before the court was the amount of damages to which the landowners and their tenants were entitled, that the taking of the land was complete, and petitioner was "for every practical purpose at the time of the removal of these cases both a nominal and actual defendant" (R. 33). The motions to remand the removal cases to the state court were overruled.

Petitioner appealed to the Court of Appeals for the Eighth Circuit from the judgments of dismissal (R. 39). The landowners filed what their counsel denominated a "notice of cross-appeal" in each of the cases which were dismissed. They likewise served notices of appeal from the orders overruling their motions to remand to the state court (R. 57-58 inc.). By stipulation of the parties, approved by the District Court, the appeals and cross-appeals were submitted on one printed record, the case of Archie C. Stude, with the final judgment in that case to be entered in the other cases (R. 41-45, inc.). While petitioner contended that the orders overruling the motions to remand were not appealable orders, it consented that the Court of Appeals might determine the questions presented on both appeals.

The opinion of the Court of Appeals for the Eighth Circuit (Collett, Circuit Judge R. 77) was filed April 30, 1953, by which that court affirmed the judgment of dismissal in the ten cases in which petitioner had invoked the original jurisdiction of the District Court. The opinion stated simply that Iowa law gave petitioner no right to appeal from the commissioners' award to the United States District Court and that no such right existed; for that reason the judgment dismissing petitioner's action as plaintiff was proper. With respect to the cases removed to the District Court Judge Collett said that while the cases had not been consolidated, the propriety of the order of the District Court overruling the motion to remand was properly before the

Court under the rule of *Deckert vs. Independence Shares Corp.*, 311 U.S. 282, 85 L. Ed. 189. The opinion then quoted from and discussed the decision of this court in *Mason City & Fort Dodge R.R. Co. vs. Boynton*, 204 U.S. 570, 51 L.Ed. 629, 27 S.Ct. 321, and held that since this court there said that a non-resident landowner in an Iowa condemnation was a defendant, within the removal statutes, that such decision was decisive of the issue of removability. The order overruling respondents' motion to remand was reversed.

Petitioner, by timely petition for rehearing, urged that the opinion had ignored the contentions set forth in petitioner's briefs. The case of *Burford vs. Sun Oil Co.*, 319 U.S. 315, not cited on the original submission was specifically called to the attention of the court. On June 17, 1953, a majority of the Court of Appeals denied the petition for rehearing (R. 101-107). Judge Collett again speaking for the majority said that the filing of the complaint in the United States District Court and the service of summons could "not be treated as having created an original action in the Federal Court * * * since actions are not initiated in the Federal Courts by filing with a sheriff a request that he appoint commissioners to assess damages."

Chief Judge Gardner dissented from the denial of the petition for rehearing. He pointed out that the proceeding prescribed by Iowa law before the county sheriff was not judicial in character but that the proceeding upon appeal to the courts became a civil action; since diversity of citizenship and jurisdictional amount were both present, he concluded that a non-resident condemnor could not lawfully be denied access to the Federal Courts (R. 107).

SPECIFICATION OF ERRORS RELIED UPON FOR REVERSAL.

I.

The Court of Appeals for the Eighth Circuit erred in holding that the United States District Court for Southern Iowa was without jurisdiction to entertain petitioner's civil action in which it was designated as a party plaintiff, since diversity of citizenship and jurisdictional amount were present and petitioner initiated its action at the earliest possible time; the prior administrative proceeding before the Iowa Sheriff was not within the jurisdiction of a United States District Court, and the fact that petitioner had initiated that proceeding did not bar it from invoking Federal jurisdiction.

II.

The Court of Appeals for the Eighth Circuit erred in holding that petitioner's compliance with Iowa law prescribing an administrative proceeding before the county sheriff in eminent domain cases precluded a resort to the United States District Court when the proceeding became a civil action.

III.

The Court of Appeals for the Eighth Circuit erred in holding that petitioner was not a defendant in the action provided for by state law and designated as an "appeal" to the courts of the state. Petitioner was manifestly either the plaintiff or the defendant in the civil action prescribed by Iowa law. If plaintiff, it was entitled to invoke the original jurisdiction of the District Court; and if defendant, it

was entitled to reach the District Court by removal proceedings.

IV.

The Court of Appeals for the Eighth Circuit erred in holding that the filing of the complaint in the United States District Court and the issuance of summons was not the commencement of an original action in that court, and in holding that petitioner "strictly followed the Iowa procedure for initiating a condemnation suit in the Iowa state courts"; and that the "complaint filed in the United States District Court cannot be treated as having created an original action." (R. 102)

SUMMARY OF ARGUMENT.

I.

A.

Iowa law prescribes a purely administrative proceeding in eminent domain cases before the county sheriff. This proceeding is "in the nature of an inquest"; it has none of the attributes of a judicial proceeding and becomes a "civil action" only when the administrative procedure has been completed.

Mason City & Fort Dodge R.R. Co. vs. Boynton, 204 U.S. 570, 51 L.Ed. 629.
Myers vs. C&NW R.R. Co., 118 Iowa 312, 91 N.W. 1076.
Des Moines Water Co. vs. City of Des Moines, 206 Fed. 657.

B.

District Courts of the United States have original jurisdiction only in civil actions wherein diversity of citizenship and jurisdictional amount are present. District Courts of

the United States have no jurisdiction over purely administrative proceedings prescribed by state law.

Tit. 28, Sec. 1332, U.S.C.A.

Delaware County vs. Diebold Safe & Lock Co., 133 U. S. 626, 33 L.Ed. 674.

II.

If state law provides that the power of eminent domain shall be exercised in an administrative proceeding, followed by a judicial action triable in the courts of the state, such action may neither be instituted in, nor removed to the United States Courts, until the administrative procedure has been completed and the controversy has become a civil action. On the other hand, if state law provides that proceedings under eminent domain shall be by a judicial proceeding in the courts of the state under supervision and control of judicial officers, then a non-resident condemnor may initiate such proceeding in an appropriate Federal Court.

Searl vs. School District, 124 U.S. 197, 31 L.Ed. 415.

Madisonville Traction Co. vs. St. Bernard Mining Co., 196 U.S. 239, 49 L.Ed. 462.

Mississippi & Rum River Boom Co. vs. Patterson, 98 U. S. 403, 25 L.Ed. 206.

Franzen vs. Chicago, Milwaukee and St. Paul Railroad Company, 278 Fed. 370.

Williams Livestock Co. vs. D.L.&W. R.R. Co., 285 Fed. 795.

Des Moines Water Company vs. City of Des Moines, 206 Fed. 657 (C.A.8th).

Kaw Valley Drainage District vs. Metropolitan Water Co., 186 Fed. 315 (C.A.8th).

Texas Pipe Line vs. Ware, 15 F.2d 171 (C.A.8th).

Ellis vs. Associated Ins. Corp., 24 F.2d 809 (C.A. 5th).

Flowers vs. Aetna Casualty & Sureties Co., 154 F.2d 881 (C.A.6th).

III.

A.

Petitioner properly invoked the original jurisdiction of the United States District Court by filing its complaint and by issuance and service of summons if, under Federal law, it was properly designated a plaintiff. Service of the notice of appeal was necessary under state law to prevent the administrative award from becoming final, and to convert the Iowa administrative proceeding into a "civil action".

Rules 3 and 4, Federal Rules of Civil Procedure.
Madisonville Traction Co. vs. St. Bernard Mining Co., 196 U.S. 239, 49 L.Ed. 462.
Burford et al vs. Sun Oil Co. et al, 319 U.S. 315, 87 L. Ed. 1424.

B.

In an action instituted in the Federal Courts the designation of a party as a plaintiff or a defendant is not controlled by state statutes or state procedural requirements but solely by the Federal law. If petitioner be a plaintiff in the Federal Court action, it properly invoked the original jurisdiction of the District Court; if it be a defendant in the action, it properly invoked Federal jurisdiction by removal.

Mason City & Fort Dodge R.R. Co. vs. Boynton, 204 U. S. 570, 51 L.Ed. 629.
Shamrock Oil & Gas Corp. vs. Sheets, 313 U.S. 100, 85 L.Ed. 1214, 61 S.Ct. 868.

IV.

A.

Rule 71A, Federal Rules of Civil Procedure, does not

enlarge or affect the jurisdiction of the District Courts of the United States.

Rule 82, Federal Rules of Civil Procedure.

B.

The law of eminent domain is purely statutory. Therefore, unless the state, by its statutes, has provided for a judicial proceeding on a "civil action" in eminent domain cases, the subject matter is not within the jurisdiction of the Federal Courts.

V.

The majority of the Court of Appeals has improperly construed the opinion of this Court in *Mason City & Fort Dodge R.R. Co. vs. Boynton*, 204 U.S. 570, 51 L.Ed. 629.

VI.

Petitioner's procedure complied with all jurisdictional requirements of Rule 71A and the case was properly before the United States District Court.

ARGUMENT.

I.

A.

Iowa law prescribes a purely administrative proceeding in eminent domain cases before the county sheriff. This proceeding is "in the nature of an inquest"; it has none of the attributes of a judicial proceeding and becomes a "civil action" only when the administrative procedure has been completed.

The Court of Appeals for the Eighth Circuit held that petitioner was precluded from invoking the jurisdiction of the United States District Court: first, because state law gave it only a right of "appeal" to a state court, no right existed to resort to the United States District Court; and, second, because petitioner followed state law by instituting its condemnation proceeding before the Sheriff, it was thereby barred from entering the Federal Court.

At the outset it is important for this court to consider the nature of the proceeding prescribed by Iowa eminent domain statutes. The Iowa Supreme Court, the Court of Appeals for the Eighth Circuit, and this Court have all by prior decisions established that the initial procedure prescribed by Iowa law is purely administrative in character.

In *Myers vs. C&NW R.R. Co.*, 118 Iowa 312, 91 N.W. 1076, it appeared that the railroad filed with an Iowa sheriff an application for condemnation of a strip of ground for railroad right of way. Commissioners were appointed and returned a written award of damages. The landowners appealed to the state court and the railroad company filed its petition for removal in that court, as then required by Federal law. The landowners challenged the railroad's right to remove to the Federal Court on the ground that the condemnation proceedings did not constitute a suit of

a civil nature, and in any event, the proceedings were not removable. The state district court sustained this challenge, and upon trial, a large verdict was returned in favor of the landowners, from which the railroad appealed to the State Supreme Court, which reversed the judgment. After carefully analyzing the Iowa statutes Chief Justice Ladd of the Iowa Supreme Court said:

> "From these statutes it plainly appears that the proceeding before the commissioners appointed by the sheriff to appraise the land is not a suit at law, but in the nature of an inquest to ascertain its value. No hearing is had, and no evidence introduced. The commissioners merely inspect the land, determine upon the amount of damages which will be occasioned by the appropriation, and make a written report to the sheriff. Thus far then the proceeding is in no respect a suit. That 'term is certainly a very comprehensive one' said Chief Justice Marshall in *Weston v. City of Charleston*, 2 Pet. 464, 7 L.Ed. 481, 'and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords. The modes of proceeding may be various, but, if a right is litigated in a court of justice, the proceeding by which the decision of the court is sought is a suit.' Unless in court, or before those exercising judicial functions, the proceeding cannot be regarded as a suit. *Wishafer v. Stewart*, 71 Pa. St. 174; *Ex parte Towles*, 48 Tex. 433. That the proceeding to condemn land is not a suit, within the language of the Removal Acts of Congress, and are such after the appeal to the district court, seems to be conclusively settled against the appellees in *Boom Co. v. Patterson*, 98 U.S. 403 (25 L.Ed. 207), and *Railroad Co. v. Myers*, 115 U.S. 1 (5 Sup. Ct. Rep. 1113, 29 L. Ed. 319)."

The Eighth Circuit Court of Appeals in a case arising under Iowa law also held that such proceeding while before an administrative tribunal was not a judicial action, and,

therefore, could not be removed to the United States District Court. In *Des Moines Water Co. vs. City of Des Moines*, 206 Fed. 657, Iowa law permitted municipalities to condemn waterworks properties, and provided for an appraisal to be made by a board composed of state district judges, residing outside the county where the municipality was located, the board to be appointed by the Chief Justice of the State Supreme Court. The water company, a non-resident of the state, attempted to remove the proceeding to the Federal Court. The District Court dismissed its complaint, and the Eighth Circuit Court of Appeals in affirming the judgment said:

> "At the time that the petition for removal was filed, the proceeding was not then a 'suit' within the meaning of the removal acts." *Kaw Valley Drainage District vs. Metropolitan Water Co.*, 186 Fed. 315.

In the *Kaw Valley Drainage District case*, supra, the laws of Kansas authorized drainage districts to acquire property by condemnation with a preliminary appraisal to be made by commissioners. The Metropolitan Water Company, a non-resident, was served with a notice of hearing before such commission and attempted to remove the proceeding to an appropriate United States District Court. The District Court sustained the removal, and enjoined the state condemnation commissioners from further action. The Eighth Circuit Court of Appeals reversed and, in the course of its opinion, said:

> "The several decisions of the Supreme Court, relating to this subject, are in perfect harmony, to the effect that the power of eminent domain may be exercised by the state in such mode as it sees fit. It may be by administrative inquest, if provision is made permitting a determination of the amount of damages by a civil action at some period before the proceedings become final, or the proceeding may be by civil action

at the outset. If the former, the federal courts are without jurisdiction until the proceedings assume the character of a civil action, when, by the latter mode, federal courts may have jurisdiction from the inception of the proceeding, if the requisite diversity of citizenship and amount in controversy exists."

That Iowa law prescribes an administrative proceeding "in the nature of an inquest" was expressly recognized by the decision of this court in *Mason City & Fort Dodge R. R. Co. vs. Boynton*, 204 U.S. 570, 51 L.Ed. 629. There speaking for this court Mr. Justice Holmes said of the Iowa statutes:

> "The first step is the valuation. Whether it is part of the case or not, it is a necessary condition to the proceedings in court."

The proceeding before the Iowa sheriff does not involve the taking of evidence and the commissioners may or may not view the premises in their sole discretion. It is clear that such proceeding involves no judicial inquiry, and that it is a mere "preliminary inquest", as both this Court and the Supreme Court of Iowa have held. It is only when the "preliminary inquest" has been completed that the proceeding becomes a "civil action."

B.

District Courts of the United States have original jurisdiction only in "civil actions" wherein diversity of citizenship and jurisdictional amount are present. District Courts of the United States have no jurisdiction over purely administrative proceedings prescribed by state law.

Since the proceeding before the Iowa sheriff is purely administrative in character, it seems to us to require no argument to demonstrate that such proceeding could not have been inaugurated in a District Court of the United

States. Jurisdiction of the District Courts is limited to "civil actions". This is prescribed by Tit. 28, Sec. 1332, U.S.C.A. The words of this statute are plain and admit of no other construction.

Prior decisions of this court make it plain that proceedings conducted before executive or administrative officers under state statutes for the preliminary determination of factual questions, or even the acquisition of legal rights, do not constitute a civil action within the meaning of the Judicial Code. Thus, in *Delaware County vs. Diebold Safe and Lock Company*, 133 U.S. 626, 33 L.Ed. 674, it appeared that under a statute of Indiana a board of county commissioners was authorized to hear, allow, and determine claims against a county based on contracts; and, if not appealed from, the decision of the commissioners was final. An appeal was provided to a state court where the cause was tried as an original action. The Diebold Safe and Lock Company, as subcontractor and assignee of the principal contractor for the building of a jail for the county, filed its claim with the county board of commissioners where it was disallowed. It appealed from the disallowance of the claim to the appropriate state court and then filed petition for removal to an appropriate United States District Court (removal at that time being available to either a plaintiff or a defendant in diversity cases). The county moved to remand the case to the state court; and, when the case reached the Supreme Court of the United States, error was assigned on the denial of such motion to remand. This court in an opinion by Mr. Justice Gray pointed out that under the statutes of Indiana the proceedings before the commissioners for the allowance of claims:

> "are in the nature, not of a trial *inter partes*, but of an allowance or disallowance, by officers representing the county, of a claim against it. At the hearing before the commissioners there is no representative of the county,

> except the commissioners themselves; they may allow the claim, either upon evidence introduced by the plaintiff, or without other proof than their own knowledge of the truth of the claim; and an appeal from their decision is tried and determined by the circuit court of the county as an original cause, and upon the complaint filed before the commissioners. * * * It follows, according to the decisions of this court in analogous cases, that the trial in the Circuit Court of the County was 'the trial' of the case, at any time before which it might be removed into the circuit court of the United States, under clause 3 of section 639 of the Revised Statutes."

The District Courts of the United States have jurisdiction only in "civil actions", and, therefore, cannot take cognizance of administrative proceedings, even though diversity of citizenship and jurisdictional amount are present, because Congress has not granted them jurisdiction over such controversies. It seems to us quite elementary that the jurisdiction of the District Courts is confined to judicial proceedings or "civil actions" as the statute itself prescribes. The courts below were manifestly in error in holding that petitioner might have initiated its condemnation action by filing a complaint in the Federal Court in Iowa and that the U. S. Marshal could then appoint commissioners to appraise the damages.

II.

If state law provides that the power of eminent domain shall be exercised in an administrative proceeding, followed by a judicial action triable in the courts of the state, such action may neither be instituted in, nor removed to the United States Courts, until the administrative procedure has been completed and the controversy has became a civil action. On the other hand, if state law provides that pro-

ceedings under eminent domain shall be by a judicial proceeding in the courts of the state under supervision and control of judicial officers, then a non-resident condemnor may initiate such proceeding in an appropriate Federal Court.

For almost a century this court has consistently recognized that eminent domain proceedings under state law, when prosecuted in the courts of a state constitute a judicial proceeding, or a "civil action" within the meaning of applicable Federal statutes. Just as consistently this court has recognized that if state law of eminent domain prescribes an administrative proceeding, such state procedure must be followed before state administrative tribunals to its completion.

The first case in which this court had occasion to consider the question was *Mississippi & Rum River Boom Co.*, 98 U.S. 403, 25 L.Ed. 462, decided March 3, 1879. There Patterson owned one entire island and parts of two others in the Mississippi River in Anoka County, Minnesota, which island formed an ideal site for forming a log boom of very extensive dimensions. Minnesota law authorized condemnation of boom sites and provided for the preliminary appointment of appraisers with an appeal to the district court of the state by any party. The proceeding was initiated, commissioners were appointed, and an award of $3,000 was made to Patterson. Both the company and Patterson appealed. Patterson, who was a citizen of Illinois, removed the case to the Circuit Court of the United States. The condemnor contended that the Federal Court was without jurisdiction. This court in speaking by Mr. Justice Field said:

> "The proceeding in the present case before the commissioners appointed to appraise the land was in the nature of an inquest to ascertain its value, and not a

suit at law in the ordinary sense of those terms. But when it was transferred to the District Court by appeal from the award of the commissioners, it took, under the statute of the State, the form of a suit at law, and was thenceforth subject to its ordinary rules and incidents. The point in issue was the compensation to be made to the owner of the land; in other words, the value of the property taken. No other question was open to contestation in the District Court. *Turner v. Holleran*, 11 Minn. 253. The case would have been in no essential particular different had the State authorized the Company by statute to appropriate the particular property in question, and the owners to bring suit against the Company in the courts of law for its value. That a suit of that kind could be transferred from the State to the Federal Court, if the controversy were between the company and a citizen of another State, cannot be doubted. And we perceive no reason against the transfer of the pending case that might not be offered against the transfer of the case supposed."

In *Searl vs. School District*, 124 U.S. 197, 31 L.Ed. 415, the statutes of Colorado provided for condemnation of lands by school districts. The procedure prescribed was to file a petition in the district court of the state containing a description of the property to be condemned, the names of all persons interested, followed by a preliminary appraisal of damages, by a commission of three freeholders appointed by the court. Upon demand by any landowner a trial before the court or jury was provided for in which the amount of damages was determined by verdict or judgment. Searl was a resident of Kansas; and, when the school district filed its condemnation petition in the Colorado court, he filed his petition and bond for removal to the Federal Court, which the state court granted. On motion the Circuit Court remanded the case to the state court. This court said:

"The fact that the Colorado Statute provides for the ascertainment of damages by a commission of three freeholders, unless at the hearing a defendant shall demand a jury, does not make the proceeding from its commencement any the less a suit at law within the meaning of the Constitution and Acts of Congress and the previous decisions of this court. The appointment of the commissioners is not, as in the case of *Mississippi & R. R. Boom Co. v. Patterson* and the *Pacific Railroad Removal Cases* a step taken by the party seeking to make the appropriation *ex parte*, and antecedent to the actual commencement of the adversary proceeding *inter partes*, which constitutes a suit in which the controversy takes on the form of a judicial proceeding. Because under the Colorado law the appointment of the commissioners is a step in the suit after the filing of the petition and the service of summons upon the defendant. It is an adversary judicial proceeding from the beginning. The appointment of commissioners to ascertain the compensation is only one of the modes by which it is to be determined. The proceeding is, therefore, a suit at law from the time of the filing of the petition and the service of process upon the defendant."

In *Union Pacific Railway Co. vs. Myers*, 115 U.S. 1, 29 L. Ed. 319, a statute of Missouri provided for the opening of streets by ordinance adopted by a city council with a preliminary determination of the damages to which the property owner was entitled by a commission appointed by the mayor of the town. Any party dissatisfied with the award of the commissioners was authorized to appeal to the circuit court of the county. The City of Kansas City instituted the statutory proceeding for widening a street running through the depot grounds of the railroad, and after a preliminary award by commissioners, an appeal was taken to the Circuit Court of Jackson County. A petition for removal of the case to the Circuit Court of the United States was

duly filed. It was urged that the removal was too late, since the proceeding before the commission constituted a trial and the case was therefore not removable. Referring to the decision of Mr. Justice Field in *Boom Company vs. Patterson*, supra, this court speaking by Mr. Justice Bradley said:

> "It was there held that the preliminary proceedings were in the nature of an inquest to ascertain the value of the property condemned, or sought to be condemned by the right of eminent domain, and was 'not a suit at law in the ordinary sense of those terms,' consequently not 'a suit' within the meaning of the Removal Acts; but that 'when it was transferred to the District Court by appeal from the award of the commissioners, it took, under the statute of the State, the form of a suit at law, and was thenceforth subject to its ordinary rules and incidents. * * * That case, we think, governs the present, so far at least as relates to the trial before the mayor, which was in its nature an inquest of valuations and assessments, not having the character of a suit."

The later case of *Madisonville Traction Co. vs. St. Bernard Mining Co.*, 196 U.S. 239, 49 L.Ed. 462, involved the right of removal of an eminent domain proceeding instituted under Kentucky law in a court of that state. This court in an opinion by Mr. Justice Harlan first analyzed the Kentucky eminent domain statutes which provided that any company authorized to construct a railroad might file in the office of the Clerk of the county court a description of the land necessary for its use; and commissioners appointed by a judge of the court were required to make an award of damages in writing. The Clerk of the court thereupon issued process against the landowners to appear in court and show cause why the commissioners' report should not be confirmed. Exceptions to the commissioners' report might be filed by either party. A jury was then impaneled to try the

issues of fact, and judgment of the court rendered in conformity to the verdict. Upon payment of the amount due and the confirmation of the commissioners' report, or the finding of the jury upon the trial, the railroad company became entitled to take possession of the land. The traction company instituted its proceeding and commissioners appointed by the court awarded $100 as damages and process was issued citing the mining company to appear and show cause why the award should not be confirmed. The mining company thereupon filed its petition and bond for the removal of the case to the Circuit Court of the United States, alleging diversity of citizenship and jurisdictional amount. Mr. Justice Harlan pointed out that by statute a suit which was within the original jurisdiction of the United States District Court was removable and then said:

> "Why could not the proceeding instituted in the county court have been brought originally in the Federal court? The case, as made in the county court, was, beyond question, a judicial proceeding; it related to property rights; the parties are corporate citizens of different states; and the value of the matter in dispute exceeded the amount requisite to give jurisdiction to the circuit court. It was, therefore, a proceeding embraced by the very words of the Constitution of the United States, which declares that the 'judicial power shall extend . . . to controversies . . . between citizens of different states', as well as by the act of 1887 (Sec. 1), which declares 'that the circuit courts of the United States shall have *original* cognizance, concurrent with the courts of the several states, of *all* suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of $2,000, . . . in which there shall be a controversy between citizens of different states'. In view of these explicit provisions it is clear that the proceeding in the county court was a suit or controversy within the meaning both of the Constitution and of the

judiciary act. We could not hold otherwise without overruling former decisions of this court."

The Court of Appeals for the Eighth Circuit recognized the clear distinction between an eminent domain proceeding, judicial in character, and one administrative in character, in the two cases of *Des Moines Water Company vs. City of Des Moines*, 206 Fed. 657, (which dealt with an Iowa statute), and *Kaw Valley Drainage District vs. Metropolitan Water Co.*, 186 Fed. 315 (dealing with a Kansas statute). We have already cited and quoted from those decisions and will not again advert to them here.

In the two courts below it was urged that petitioner might have instituted its eminent domain proceeding initially in the United States District Court and that, having elected to proceed before the Iowa sheriff, it was precluded from Federal jurisdiction. The District Court adopted this view; the Court of Appeals first said that no right to institute the judicial action in the Federal Court existed because no such right was granted by the statutes of Iowa. On petition for rehearing that court apparently changed the basis of its conclusion by pointing out that suits were not instituted in the United States District Court by applying to a state sheriff for appointment of commissioners to appraise damages.

The trial court thought that any case for the appropriation of lands under the state power of eminent domain was a "civil action" from its inception, regardless of the character of the proceeding required by state law, and in support of its contention cited the cases of *Mississippi & Rum River Boom Co. vs. Patterson*, supra, and *Franzen vs. Chicago, Milwaukee and St. Paul Railroad Company*, 278 Fed. 370. These authorities along with *Williams Livestock Co. vs. D.L.&W. R.R. Co.*, 285 Fed. 795, are all clearly distinguishable as we shall point out.

In the *Franzen* case the statutes of Illinois provided for a judicial proceeding in eminent domain cases to be initiated by the filing of a complaint with the Clerk of the state court, appointment of commissioners by a judge of the court, and further proceedings in a state court of record. The Seventh Circuit Court of Appeals was careful to point out this salient requirement of state law in its opinion which held that the case was properly instituted in a Federal district court.

The Pennsylvania statutes considered in *Williams Livestock Co. vs. D.L.&W. R.R. Co.*, 285 Fed. 795, provided for a judicial action in the Court of Common Pleas in condemnation cases with all steps, including the appointment of "viewers", under the direction of a judge of that court. In that case Witmer, District Judge, said of the Pennsylvania statute:

> "The condemnation and appropriation of the plaintiff's land was complete when the defendant railroad company entered its bond in the county courts where the land is located. Immediately thereon the plaintiff was invested with the right to proceed against the defendant to recover the damages sustained. This, the statute provides, shall be done by the appointment of viewers preliminary to a trial by jury, if that be demanded by either of the parties. Though the first step in the proceeding is by petition for the appointment of viewers, and not by writ to bring the defendant into court to answer, it nevertheless has the same end in view, to litigate a controversy between parties, and may be regarded as the beginning of a suit of a civil nature, whereof this court shall have original cognizance, concurrent with the courts of the several states."

It is, of course, fundamental that in diversity cases the Courts of the United States will entertain judicial proceedings authorized by state statute and adjudicate, protect, and enforce rights granted by state statutes. We believe

that the answer to the question here presented would be very simple had the Iowa statute instead of providing for an "appeal" from the administrative award merely said that any party aggrieved might institute an action in a court of competent jurisdiction where the case should he heard *de novo*. The mere fact that the Iowa statutes provide for an appeal only to a state court does not deprive National Courts of jurisdiction. This is true because it is fundamental that purely procedural state statutes may neither restrict, deny, nor enlarge the *jurisdiction* of the Courts of the United States. The right of a litigant to resort to the United States Courts is governed solely by the Constitution and laws of the United States.

The Court of Appeals for the Eighth Circuit itself in *Texas Pipe Line Co. vs. Ware*, 15 F.2d 171, speaking by the late Judge Kenyon said concerning a workmen's compensation law of Louisiana, which, by statute, was to be administered and applied in a judicial proceeding in the courts of the state:

> "The right to compensation for injury to an employe under certain conditions was provided by the Louisiana statutes. That right is governed and conditioned by the law of the state where granted. The remedy provided to enforce it was a court action, which is governed by the law of the forum. This action was a transitory one, and could be maintained in a court of the United States having jurisdiction of the subject matter and the parties. Undeniably the right sought to be enforced is not in any way contrary to the public policy of the United States. The effort to confine the action to the domicile of defendant was ineffectual. Plaintiff had a choice of tribunals in which to test his right to compensation. As said in *Davis v. Gray*, 16 Wall. 203, 221, 21 L.Ed. 447: 'A party by going into a national court does not lose any right or appropriate remedy of which he might have availed himself in the state courts of the same locality.' There may be some

few provisions of the act which perhaps could be more easily carried out in the courts of Louisiana. Such provisions can properly be held to apply where a suit is brought in the state court. We see no insuperable difficulties, however, to the federal courts enforcing the provisions of the Compensation Law. There is no sound reason to challenge the jurisdiction of the United States District Court in this case."

Under the Texas statutes relating to workmen's compensation an injured employee first proceeds before a Texas administrative board and either party aggrieved by the award may bring an action in the courts, and a trial is then held before a court and jury. In *Associated Industries Corp. vs. Ellis*, 15 F.2d 464, Aff'd as *Ellis vs. Associated Industries Corp.*, 24 F.2d 809, it is held that such action may be instituted in an appropriate United States District Court, after the administrative proceedings before the Compensation Board have been completed.

We believe the correct rule to be drawn from all of these authorities is, as the Eighth Circuit Court itself said in the *Kaw Valley Drainage District case:* supra:

"If state law provides for an administrative proceeding to be followed by a civil action, the Federal Courts are without jurisdiction until 'the proceedings assume the character of a civil action'. But if state law provides for a judicial proceeding, then the Federal Courts have jurisdiction from the inception of such proceeding."

The law of Iowa clearly provides for an administrative proceeding, with the right to either party to have the matter tried *de novo* in a civil action in the courts of the state. This administrative proceeding could not have been instituted in the United States District Court. The proceeding did not become a "civil action" until the administrative procedure had been concluded. Since petitioner could not,

in any event, have instituted its condemnation proceeding in the United States District Court, it is clear that it sought Federal jurisdiction at the earliest possible moment.

We submit, therefore, that the conclusion of the District Court, adopted on petition for rehearing by the Court of Appeals, that petitioner, because it instituted the purely administrative proceeding required by Iowa statutes before the Iowa Sheriff, was thereby precluded from initiating the civil action also provided for by Iowa law in the United States Courts was clearly erroneous. We are firmly convinced that the only question presented by this record is whether petitioner was properly designated as a plaintiff or a defendant in the United States District Court. This question will be discussed in the next division of this brief.

III.

A.

Petitioner properly invoked the original jurisdiction of the United States District Court by filing its complaint and by issuance and service of summons, if, under Federal law, it was properly designated a plaintiff. Service of the notice of appeal was necessary under state law to prevent the administrative award from becoming final and to convert the Iowa administrative proceeding into a "civil action."

In denying the rehearing sought by petitioner a majority of the Court of Appeals said that under the record petitioner had failed to properly invoke the jurisdiction of the District Court; that it had complied strictly with the Iowa procedure for initiating a condemnation suit in the courts of the state; that the complaint filed by petitioner "was required by the Iowa statutes;" that "the complaint filed in the United States District Court cannot be treated as

having created an original action in the Federal Court". (R. 102) Following these pronouncements the majority closed the opinion with the following somewhat astounding statements:

> "It may well be that if this action had been commenced in the United States District Court, that court would have had jurisdiction. But actions are not initiated in the federal courts by filing with a sheriff a request that he appoint commissioners to assess damages. It might also be that if the action had been initiated in the federal court that that court would have followed the Iowa procedure under Rule 71A. But it was not asked to do so. And we do not pass upon that question because it, like the question of whether the action could have been initiated in the federal court, is not in the case." (R. 102-103)

Thus, a majority of the Court of Appeals not only ignored the fundamental rules of law so clearly established by the authorities cited in the preceding division of this brief, but disregarded also salient facts with respect to jurisdiction of the District Court. It may be of some benefit to briefly restate the situation confronting petitioner and its counsel when the excessive and exorbitant awards were returned by the sheriff's commissioners in the administrative proceeding. The situation was this:

(a) The Iowa statutes made the awards final unless appealed from.

(b) This Court, by its decision in *Mason City & Fort Dodge R.R. Co. vs. Boynton*, 204 U.S. 570, 51 L.Ed. 629, had raised very serious doubts whether petitioner's status was that of a plaintiff or a defendant in Federal Court proceedings in the civil action provided for by Iowa law, and as to the right of petitioner to reach the United States District Court if it strictly followed state statutes. On the other hand, if petitioner failed to appeal from the administra-

tive awards, they might well be held to have become a finality.

Petitioner was manifestly either the plaintiff or the defendant in the action "triable by ordinary proceedings" prescribed by the Iowa Code; if a plaintiff, then, having exhausted the administrative procedure, petitioner could properly invoke the original jurisdiction of the United States District Court; if a defendant, petitioner could reach the District Court by removal proceedings. In view of the grave doubts as to the proper procedure, petitioner elected to preserve its rights both as a plaintiff and a defendant. It first served upon the sheriff and the landowners in each case a notice stating that it had "appealed" from the awards and that the "appeal" would be docketed in the United States District Court on or before March 7, 1952 (the next day following service of the notice). On March 7, 1952, petitioner filed its complaint in the office of the Clerk of the United States District Court. The complaint designated petitioner as plaintiff and the landowner, his tenants and lienholders defendants in each action. The complaint in each case set forth diversity of citizenship and jurisdictional amount, described the property affected by the condemnation, and that appropriated, alleged the excessive and unreasonable character of the awards, and prayed that on a trial of the cause the damages be fixed and determined. (R. 1-4)

Summons was issued by the Clerk citing the defendants named "to answer the complaint, copy of which is herewith served upon you, within 20 days" (R. 9), which was served by the United States Marshal.

It is difficult for us to find any basis whatever, in the record for the statements found in the majority opinion overruling the petition for rehearing. Under Iowa law the condemnor files no complaint, or petition in the state court. This is done by the landowner who, by statute, is

the plaintiff, and the condemnor is the defendant. The complaints filed in the United States Court were filed by petitioner, not by the landowner, while petitions were filed by the landowners in the removal cases in accordance with state law.

Equally unsupported is the conclusion of the majority that petitioner's complaint in the United States District Court "cannot be treated as having created an original action in the Federal Court". We must confess that we cannot understand this statement of the majority for Rule 3, Federal Rules of Civil Procedure, expressly provides that a suit is commenced in the United States District Court by filing a complaint. Under the Federal rules petitioner took every step necessary to invoke the original jurisdiction of the Federal Court, and there was nothing further which it could have done to initiate its "civil action" in that court.

Had petitioner believed that the action was instituted in the Federal Court by serving the notice of appeal on the sheriff and the landowners, not only would no complaint have been filed in the United States District Court, but no summons was required. What petitioner did was simply to follow Iowa law through the administrative procedure, and then to serve a notice of appeal, to convert the administrative proceeding into a suit, or "civil action", a step necessary by state law to prevent the award from becoming a finality. Immediately thereafter petitioner commenced its original action in the United States District Court. It is, therefore, plain that the conclusion of the majority of the Court of Appeals that petitioner did not properly invoke the original jurisdiction of the District Court was in error.

If there be any question about the right of petitioner to bring its civil action in the United States District Court, although state law provides only for an appeal to a state tribunal, it has been decided by this Court in the recent

case of *Burford et al vs. Sun Oil Co. et al*, 319 U.S. 315, 87 L.Ed. 1424. It there appeared that statutes of Texas provided that no new oil wells could be drilled without securing a certificate or permit from the state railroad commission after an administrative proceeding before that body. An appeal was authorized by statute from the commissioners' decision to a state equity court. Burford applied to the commission for a permit to drill wells and his application was opposed by Sun Oil Company. The permit was granted and Sun Oil Company, a non-resident, then instituted in the United States District Court an equity action to set aside the permit and order of the commission, charging that the permit was invalid under state law and that the statutory scheme of regulation of drilling wells as administered deprived Sun of rights and property in violation of constitutional guaranties. The United States District Court dismissed the complaint on the ground that it lacked jurisdiction, since state law provided only for an appeal to a state court. The Court of Appeals for the Fifth Circuit reversed and held Sun entitled to certain equitable relief. This Court reviewed the case, and the opinion of the majority, written by Mr. Justice Black, held that the case was within the jurisdiction of the District Court but that court should have remitted the parties in the first instance to the state courts because of possible conflict between state and Federal regulatory authority. This Court, speaking by Mr. Justice Black, said:

> "Jurisdiction of the federal court was invoked because of the diversity of citizenship of the parties, and because of the Companies' contention that the order denied them due process of law. There is some argument that the action is an 'appeal' from the State Commission to the federal court, since an appeal to a state court can be taken under relevant Texas statutes; but, of course, the Texas legislature may not make a

federal district court, a court of original jurisdiction, into an appellate tribunal or otherwise expand its jurisdiction, and the Circuit Court of Appeals in its decision correctly viewed this as a simple proceeding in equity to enjoin the enforcement of the Commission's order."

Thus, it appears that the procedure adopted by petitioner in the case at bar was identical in every respect with the procedure followed by Sun Oil Company in the *Burford* case. The statement of the majority "that condemnor did not file its action in the United States District Court, as was done in the *Burford* case" is, therefore, incorrect.

Of course, the situation which was presented in the *Sun Oil Company* case is not involved in the case at bar. Iowa law expressly grants to all railroad corporations the right of eminent domain and provides for a civil action to determine the amount which the railroad must pay. No question of conflict between a state regulatory body and the Federal judiciary arises here. While there is a suggestion in the opinion of District Judge Riley that to sustain Federal jurisdiction under the facts shown would constitute an "unwarranted intrusion" into the proceedings, it is plain that Judge Riley meant that the "intrusion" would occur because he regarded the institution of the proceedings before the sheriff as the commencement of a "civil action".

We submit, therefore, that petitioner here followed the administrative procedure prescribed by Iowa law just as was done in *Burford vs. Sun Oil Company*, supra; that when the administrative procedure was concluded, petitioner properly commenced an original action in the United States District Court just as did Sun Oil Company; and the fact that petitioner here served the notice of appeal required by state law did not waive or bar its right to commence its

suit in the District Court of the United States. In fact, this case and the *Burford* case "walk on all fours", except for the issue of possible conflict between state and Federal jurisdictions, a question not involved in the case at bar.

B.

In an action instituted in the Federal Courts the designation of a party as a plaintiff or a defendant is not controlled by state statutes or state procedural requirements but solely by the Federal law. If petitioner be a plaintiff in the Federal Court action, it properly invoked the original jurisdiction of the District Court; if it be a defendant in the action, it properly invoked Federal jurisdiction by removal.

If petitioner was entitled to access to the United States District Court, it was manifestly either a plaintiff or a defendant in the civil action authorized by Iowa statutes. The Iowa statutes expressly made petitioner a defendant in that action. It is quite fundamental, of course, that state laws cannot operate to enlarge, restrict, or deny the *jurisdiction* of Federal tribunals.

This Court pointed out in *Mason City & Fort Dodge R.R. Co. vs. Boynton*, 204 U.S. 570, 51 L.Ed. 629, 27 S.Ct. 321, that the designation applied to a party to a civil action by state law was not controlling on the issue of removability; that the United States Courts must determine such questions for themselves as a matter of Federal law. There a non-resident whose property was condemned by a resident railroad corporation was held to be a defendant in the removal action, although by Iowa law he was designated as the plaintiff. Mr. Justice Holmes in speaking for this Court said:

> "It is quite conceivable that a state enactment might reverse the names which, for the purposes of removal, this court might think the proper ones to be applied. In condemnation proceedings the words 'plaintiff' and 'defendant' can be used only in an uncommon and liberal sense. The plaintiff complains of nothing. The defendant denies no past or threatened wrong. Both parties are actors: one to acquire title, the other to get as large pay as he can."

The rule of the *Boynton* case was considered in the later opinion of this Court in *Shamrock Oil and Gas Corp. vs. Sheets*, 313 U.S. 100, 85 L.Ed. 1214, wherein this Court speaking by Mr. Justice Stone said:

> "But at the outset it is to be noted that decision turns on the meaning of the removal statute and not upon the characterization of the suit or the parties to it by state statutes or decisions."

Further authorities might be cited but the pronouncements already quoted from, we believe, are sufficient to establish that the question of whether a party seeking relief in a Federal Court is to be regarded as a plaintiff or a defendant, in that court, is purely a question of Federal law, not governed by state statutes or decisions. Here it is to be noted that condemnor originated the proceeding before the administrative body; that it was seeking to acquire land found necessary to accomplish a project authorized by certificate of the Interstate Commerce Commission; that it was dissatisfied with the award made in the administrative proceeding and sought judicial review. We believe that under the circumstances petitioner was quite clearly a plaintiff in the action filed in the United States District Court. If the whole condemnation proceeding be viewed in its entirety, as the *Boynton* case indicates is proper, it is quite clear that petitioner is the plaintiff rather than the defendant.

If petitioner be not the plaintiff in the suit filed in the United States District Court, then manifestly it must be the defendant in that action. The *Boynton* case did not decide whether a railroad condemnor might be regarded as a defendant within the removal statutes, but only that the landowner, whose property was being taken was a defendant, notwithstanding he had instituted the action, and was designated by state law as the plaintiff.

IV.

A.

Rule 71A, Federal Rules of Civil Procedure, does not enlarge or affect the jurisdiction of the District Courts of the United States.

In the courts below it was urged by respondents that petitioner had a right to initiate its condemnation proceeding in the United States District Courts "under Rule 71A". This novel theory apparently was adopted by the majority of the Court of Appeals. It is perfectly apparent, of course, that Rule 71A in no manner affects the jurisdiction of the District Courts of the United States. This is true because it is a mere procedural rule promulgated by this Court pursuant to an act of congress. Furthermore, Rule 82 itself specifically provides that none of the Rules of Civil Procedure shall affect either jurisdiction or venue.

B.

The law of eminent domain is purely statutory. Therefore, unless the state, by its statutes, has provided for a judicial proceeding, or a civil action in eminent domain cases, the subject matter is not within the jurisdiction of the Federal Courts.

Counsel for respondents in the courts below urged that since Rule 71A provides the procedure to be followed in eminent domain cases in the United States District Courts, and, since Iowa had delegated to petitioner the substantive right to exercise the power of eminent domain, petitioner was thereby authorized to commence its eminent domain proceedings in the United States District Court. This contention, of course, would be sound if Federal law delegated to petitioner the right to appropriate property for railroad purposes. It would also be sound if Iowa statutes provided for a judicial proceeding in the courts of the state in eminent domain cases. But what respondents overlook is that in determining whether a given proceeding provided for by state law is judicial in character, consideration must be given to the fundamental nature of the proceeding, whether the inquiry is for the purpose of determining rights, duties and obligations between contending parties according to generally established rules of law, and the nature of the body before which the proceedings are to be conducted.

As this Court well knows in the past 75 years both state legislatures and the Congress have seen fit to enact a myriad of laws creating administrative boards and commissions which inquire into and regulate the activities of the people of the United States. Administrative boards have been created to administer workmen's compensation laws affecting employer's liability for personal injury to employees, to regulate relations between employer and employee, to regulate trade and industry, and to regulate public utility

corporations. Generally, the laws creating such boards and commissions provide for a judicial review of their decisions as the eminent domain statutes of Iowa provide for a trial *de novo* in the courts of the state. No one, of course, would contend that a proceeding for workmen's compensation under state law providing for an administrative board or commission could be instituted in the first instance in a United States District Court. But if a legislature, as in Louisiana, provides for a plan of workmen's compensation to be administered by a civil action in the courts of the state by judicial officers and other judicial proceedings, then, as the Eighth Circuit Court of Appeals itself held in *Texas Pipe Line Co. vs. Ware*, 15 F.2d 171, there is no sound reason to challenge the jurisdiction of the United States District Courts over such a case.

V.

The majority of the Court of Appeals has improperly construed the opinion of this Court in Mason City & Fort Dodge R.R. Co. vs. Boynton, 204 U.S. 570, 51 L.Ed. 629.

The motions to dismiss in the cases in which the railroad was designated as plaintiff and the motions to remand in the removal cases were heard at one time before the District Court. The cases were not otherwise consolidated either in the district or the appeals courts. The Court of Appeals held that under such circumstances the rule of *Deckert vs. Independence Shares Corp.*, 311 U.S. 282, 85 L.Ed. 189, should be followed, and that the propriety of the ruling of the court on the motion to remand was properly before it. We consented below to a determination of the questions presented on both appeals.

We have already pointed out in an earlier division of this brief that petitioner was entitled to invoke the jurisdiction of the United States District Court either as plaintiff

or defendant. It seems to us quite fundamental that if petitioner was properly denied access to the United States District Courts because it was not a proper party plaintiff, that then it necessarily follows that it had a right of removal from the state court to the Federal Court because it was a defendant in the proceeding. On the issue of removability the Court of Appeals held that the *Boynton* case was decisive. In this, we think the Court of Appeals was in error. In that case a non-resident owning certain lands in the City of Carroll, Iowa, appealed from the award of the sheriff's jury to a state district court, caused the case to be there docketed, and then filed his petition for removal and bond. The case was tried in the United States District Court and the railroad appealed from the judgment contending that the landowner had no right to remove. The Court of Appeals for the Eighth Circuit certified to this Court four questions which it asked this Court to answer. This Court found it necessary to answer only the first question certified which was, "Was the landowner a defendant within the removal statutes?" Mr. Justice Holmes, speaking for this Court, answered the question, "Yes", and found it unnecessary to go further.

Mr. Justice Holmes adverted to the dual character of the parties as actors in a condemnation proceeding and pointed out that the necessity of the railroad to acquire the property constituted the main spring of the action. He expressly said that it was unnecessary to determine whether the decision of the Iowa Supreme Court that the railroad was entitled to remove the action was right or wrong.

We believe that an analysis of Mr. Justice Holmes' opinion in the *Boynton* case does not support the conclusion of the Court of Appeals that it is absolutely decisive of the removability issue presented by this record. We feel that the majority of the Court of Appeals extended the *Boynton* case to unjustified lengths. If we consider that the railroad

had already acquired title and possession of the land involved by the administrative proceeding before the Iowa Sheriff, and consider the commencement of the civil action as the beginning of a lawsuit, then we think it quite apparent that the condemnor may well be both a nominal and an actual defendant in the case as held by District Judge Riley. The necessity of the railroad to acquire title referred to by Mr. Justice Holmes as the "mainspring of the proceeding" is no longer the paramount issue for determination. The condemnor, having acquired the property by the administrative proceeding, is in the position of defending against a claim for damages founded upon the lawful taking of the landowner's property. Viewed in this light, it is apparent that petitioner's status is that of a defendant. If this be true, removal to the United States District Court was proper and the decision of the Court of Appeals for the Eighth Circuit was erroneous.

VI.

Petitioner's procedure complied with all jurisdictional requirements of Rule 71A and the case was properly before the United States District Court.

In the courts below respondents urged that petitioner's procedure in instituting its original action failed to comply with the requirements of Rule 71A, Federal Rules of Civil Procedure. Neither of the courts below found it necessary to pass on this question, and it is significant that this contention was not made in the respondents' motion to dismiss the action. The contention advanced was that because the case was docketed as "Chicago, Rock Island and Pacific Railroad Company vs. Stude," rather than as "Chicago, Rock Island and Pacific Railroad Company vs. a certain described tract of land in Pottawattamie County, Iowa", and because a summons was issued to which was attached

a copy of the complaint, rather than the notice to appear and show cause referred to in Rule 71A, jurisdiction of the District Court was not properly invoked.

Of course, it would have been an entirely futile gesture for the petitioner to have served a notice of the character referred to in Rule 71A which is provided for in the event that the condemnation proceeding is initiated in the Federal Court. The complaint referred to the prior administrative proceedings before the sheriff. Since the hearing before a commission prescribed by state law had already been held, the United States District Court had no occasion to conduct further proceedings which would be required by subdivision (k) of Rule 71A had the condemnation been first instituted in the United States District Court.

In any event it affirmatively appears that the summons, together with the copy of the complaint, gave the landowner all information which he was entitled to have by the provisions of the Federal Rule. Petitioner's procedure met all jurisdictional requirements of Rule 71A and the contention of respondents, if renewed here, is manifestly without support.

CONCLUSION.

It is conceded that this cause presents a controversy wholly between citizens of different states involving more than $3,000; it is conceded that Iowa law provides in the first instance an administrative proceeding in condemnation cases, which, by statute, becomes a "civil action" when it reaches the courts for determination. It is the contention of respondents that petitioner should have instituted that administrative proceeding in the District Court of the United States and that, having followed the administrative procedure prescribed by state law, it is now barred from invoking the original jurisdiction of this Court. This view was

adopted by the two courts below. We think it plain that the decisions of the courts below have overlooked a very fundamental point; namely, that the District Courts of the United States can exercise jurisdiction only in civil actions, and only when the administrative procedure has been completed did the case become a civil action.

We submit that the judgment of the District Court dismissing petitioner's complaint as plaintiff was wrong, and that in affirming this judgment the Court of Appeals was in error. But if the judgment of dismissal be correct, if for any reason petitioner was not a proper party plaintiff, then petitioner's status was that of a defendant entitled to reach the District Court by removal.

The question is of major importance, not only with respect to the issue of the law of eminent domain which is here presented and which arises under the statutes of a large number of states, but also because it involves the relationship of state administrative bodies and the District Courts of the United States. The decisions of the courts below have denied to the petitioner rights guaranteed by the statutes of the United States. The decision of the Court of Appeals should be reversed.

Respectfully submitted,

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APPENDIX.

(All section references are to the Code of Iowa, 1950.)

Section 471.6 Railways. Any railway, incorporated under the laws of the United States or of any state thereof, may acquire by condemnation or otherwise so much real estate as may be necessary for the location, construction, and convenient use of its railway. * * *

Section 472.3. Application for condemnation. Such proceedings shall be instituted by a written application filed with the sheriff of the county in which the land sought to be condemned is located. Said application shall set forth: * * *

Section 472.4. Commission to assess damages. The sheriff shall thereupon, except as otherwise provided, appoint six resident freeholders of his county, none of whom shall be interested in the same or a like question, who shall constitute a commission to assess damages to all real estate desired by the applicant and located in the county.

Section 472.8 Notice of assessment. The applicant, or the owner or any lienholder or encumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, ten days notice, in writing. Such notice shall specify the day and the hour when the commissioners will view the premises, and be served in the same manner as original notices.

Section 472.14. Appraisement—report. The Commissioners shall, at the time fixed in the aforesaid notices, view, if necessary, the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation, and file their written report with the

sheriff. The appraisement and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney for the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record. In case of such knowledge the appraisement shall be made of the different portions, as they are known to be owned.

Section 472.17. When appraisement final. The appraisement of damages returned by the commissioners shall be final unless appealed from.

Section 472.18. Appeal. Any party interested may, within thirty days after the assessment is made, appeal therefrom to the district court, by giving the adverse party, his agent or attorney, and the sheriff, written notice that such appeal has been taken.

Section 472.21. Appeals—how docketed and tried. The appeal shall be docketed in the name of the owner of the land, or of the party otherwise interested and appealing, as plaintiff, and in the name of the applicant for condemnation as defendant, and be tried as in an action by ordinary proceedings.

Section 472.22 Pleadings on appeal. A written petition shall be filed by the plaintiff on or before the first day of the term to which the appeal is taken, stating specifically the items of damage and the amount thereof. The defendant shall file a written answer to plaintiff's petition, or such other pleadings as may be proper.

Section 472.23. Question determined. On the trial of the appeal, no judgment shall be rendered except for costs, but the amount of damages shall be ascertained and entered of record.

Section 472.25 Right to take possession of lands. Upon the filing of the commissioners' report with the sheriff,

the applicant may deposit with the sheriff the amount assessed in favor of a claimant, and thereupon the applicant shall, except otherwise provided, have the right to take possession of the land condemned and proceed with the improvement. No appeal from said assessment shall affect such right, except as otherwise provided.